

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Public Inquiry Concerning the Terms of 39
U.S.C. 404(d)

Docket No. PI2016-2

INITIAL COMMENTS OF THE ASSOCIATION OF UNITED STATES POSTAL LESSORS
REGARDING THE JURISDICTION OF THE POSTAL REGULATORY COMMISSION WITH
RESPECT TO POST OFFICE CLOSINGS

February 5, 2016

Pursuant to the request of the Postal Regulatory Commission (the "Commission") in Docket PI2016-2 filed December 10, 2015, the Association of United States Postal Lessors ("AUSPL") hereby submits the following comments with respect to the matters addressed in such Docket:

A. AUSPL.

AUSPL is a membership association with approximately 3,000 members who own and lease to the United States Postal Service ("USPS") over 9,000 buildings in which the USPS conducts postal operations. As the owners and lessors of buildings used by the USPS, AUSPL's members are acutely aware of the impact the closing of post offices can have on the communities in which they are located. Most buildings owned by AUSPL members are located in small and rural communities, in which post offices are more than just facilities for sending and receiving mail and utilizing other postal services. They are also important centers of social life in such communities, and serve as important facilitators of their economies.

For these reasons, post office closures in the areas in which AUSPL members own buildings have far more significance than merely acting as part of USPS plans to reorganize operations. Such closures can have irreversible impacts on the people in such communities. For these reasons it is vital that the public's interest be adequately heard and protected when post offices are closed in rural areas.

B. 39 U.S.C. § 404(d).

The express purpose of 39 U.S.C. § 404(d) is to ensure that the public interest is given due consideration when the USPS determines whether to “close” or “consolidate” a post office. In such a case, 39 U.S.C. § 404(d)(2)(A)(i) makes explicit that the effect on the community of the closing or consolidation in question is to be given serious consideration. Moreover, 39 U.S.C. § 404(d)(2)(A)(iii) makes clear the reason strict procedures are to be followed when closing or consolidation of a post office is considered. Under that statute, a closing or consolidation is to be examined to determine whether such closing or consolidation:

[i]s consistent with the policy of the Government . . . that the [USPS] shall provide a ***maximum degree of effective and regular postal services*** to rural areas, communities and small towns where post offices are not self-sustaining. (Emphasis added.)

In short, the enabling statute under which the Commission derives its authority to review USPS closing and consolidation decisions is clear in stating that its purpose is to protect small and rural communities, acknowledging as it does that effective mail service must be subsidized in such communities. Moreover, the statute recognizes that the mail service to be expected from the postal facilities in such communities is to be effective and regular to the “maximum degree.”

For these reasons, in interpreting its role in the closing and consolidation process, the Commissions should keep in mind the express objective of 39 U.S.C. § 404(d), and at the same time recognize that its consideration of appeals of closing and consolidation decisions is the last chance impacted communities have to be heard with respect to USPS decisions that can have lasting adverse impacts on such communities. The Commission should carefully review appeals of such decisions to help protect such communities against improper closing and consolidation decisions.

C. Definitional Issues.

The Commission’s request for input under Docket No. PI2016-2 is curious in part because it appears to treat as settled certain definitional matters which are hardly intuitive, and which would not seem to be required by the language of 39 U.S.C. § 404(d). For example, the Commission’s request seems to imply that, while 39 U.S.C. § 404(d) gives the Commission jurisdiction to hear appeals of “closures” and “consolidations” (which it manifestly does), the Commission interprets the statute in such a way as to believe it does not give the Commission authority to hear appeals related to “relocations” or “rearrangements.” Insofar as “rearrangements” are concerned, such an interpretation of the statute does not seem compelled by the statutory language or by common sense.

First, the common sense approach to interpreting the statute would seem to be to consider the loss of any building as a “closure” or “consolidation” (in the case where two post offices combined into one). It is undeniably the case that where two post offices existed before action by the USPS and one exists after, one of the post offices was in fact “closed.”

Moreover, even USPS regulations seem to take this approach. Under 39 C.F.R. § 241.3, the USPS recognizes that the rules with respect to closings and consolidations are intended to address:

[a]ny proposal to replace a post office with a community post office, station, or branch, consolidation with another post office, and any proposal to discontinue a post office ***without providing a replacement facility***. (Emphasis added.)

The regulation itself therefore takes a facility by facility approach in determining what constitutes the “closure” or “consolidation” of a post office. Given its role as the last arbiter of the propriety of USPS actions in closing or consolidating post offices, and given the statutory emphasis on ensuring small and rural communities receive the “maximum” level of effective and regular postal services, the Commission should view itself as having jurisdiction over an appeal any time action by the USPS results in the elimination of a post office building.

Moreover, such an interpretation of the statute also seems consistent with the idea that certain relocations would not be subject to appellate review by the Commission.¹ That is, using the normal definition of the term “relocation,” one would expect in a “relocation” that a building might close in one place in the community, but the postal services formerly provided in the “relocated” building would simply have moved to a new building in the same community. That scenario would seem consistent with the language of 39 C.F.R. § 241.3 which contemplates that the provision of a “replacement facility” would be the kind of action that might make the “closure” rules inapplicable.

With respect to another definitional issue, one of the most troubling aspects of the Commission’s request for comment is its apparent acceptance of the concept that a “rearrangement” of postal services by the USPS is somehow not governed by the statutory procedures regarding “closures” and “consolidations” and is therefore not a matter which can be appealed to the Commission. Simply put, nothing in 39 U.S.C. § 404(d) or the applicable regulations makes any reference to a “rearrangement” of postal services by the USPS. Nor is that term subject to any logical limiting principle. Any action might be labeled a “rearrangement.” If the term is deemed broad enough to include action which might lead to the elimination of a physical facility, then the statute requiring compliance with certain procedures for “closures” could be easily circumvented.

For these reasons, an interpretation of 39 U.S.C. § 404(d) that focuses on whether a physical facility is closed by USPS action is closest to the plain meaning of the words used in the statute and the regulations, both of which also appear to adopt that consideration. Moreover, such an interpretation also provides the best opportunity to measure USPS facility decisions against the statutory goal of providing small and rural communities with “a maximum degree of effective and regular postal services.” Because that statutory goal and the interests of such communities deserve protection, the best interpretation of the

¹ As discussed below, whether the Commission should or should not properly consider appeals of some “relocations” depends in part upon the application of concepts having to do with defining what constitutes a “community” and determining whether “sole source” considerations are appropriate.

statute is one which would preserve the Commission's role in hearing appeals in any case in which a physical facility which had previously been open is closed.

D. "Sole Source" and "Communities."

In addition to the matters discussed above, the Commission's request for comments sought input regarding the Commission's reliance on the "sole source" concept as it applies to consideration of the impact on postal services in a community when the postal service contemplates eliminating a building from its network of facilities. As with the concept of postal service "rearrangements," nothing in 39 U.S.C. § 404(d) suggests that a determination as to the closing of a facility should depend upon whether the facility was the "sole source" of one or more postal services in a community. In fact, basing a review of the decision to eliminate a facility upon such "sole source" considerations seems antithetical to the express language of that statute. Therefore, "sole source" considerations should not be a significant factor in such reviews.

In this regard, 39 U.S.C. § 404(d)(2)(A)(iii) expressly states that a critical consideration in evaluating the elimination of a facility is whether such a facility elimination will adversely impact the goal of "provid[ing] a *maximum degree* of effective and regular postal services to rural areas, communities and small towns" (Emphasis added.) In any town, alternatives are likely to exist for one or more postal services provided in a post office. However, in absence of such post office, such alternatives may well not provide the "maximum degree" of "effective" and "regular" postal services. Customers who formerly used the post office in such a town might, in its absence, be required to make multiple trips to far flung locations to receive all the postal services formerly provided in the post office. Clearly, such a result would diminish the effectiveness and regularity of the postal services provided in the community, and would prevent achievement of the statutory goal that such services should be provided to the "maximum degree" possible.

For these reasons, while the extent of available postal services in a community might be a factor in determining whether a post office may properly be closed, "sole source" analysis is inconsistent with 39 U.S.C. § 404(d) and underemphasizes the impact of facility closures on postal patrons. The possible existence in a community of a single other alternative for a particular postal service should not outweigh the potential inconvenience and inefficiencies which would result from the closure of a facility. Instead, to be consistent with the statute, the analysis must focus on the best ways to provide the community in questions with the "maximum degree" of effective postal services.

Similarly, analyses which determine that adequate access to postal services is available in a community simply because they expand the definition of what constitutes a "community" are also inconsistent with the statutory objective that small and rural communities should be provided the "maximum degree" of regular and effective postal services. Loose definitions of what constitutes a "community" for such purposes could mean postal patrons must travel long distances between towns to receive the same postal services that are readily available to urban dwellers. That is the result 39 U.S.C. § 404(d)

expressly sought to prevent, recognizing as it does that postal facilities in small and rural communities are not expected to be economically self-sustaining.²

Therefore, while it may be appropriate to consider postal services otherwise available in a community when examining post office closure decisions, such should not be permitted to overstate the extent of the otherwise available services merely by expanding the definition of the “community” in which they are alleged to be available. The statute expressly incorporates the maximum effectiveness of the available services as an overriding consideration, and such consideration must therefore prevail over any desire to artificially expand the definition of the “community” in order to support a contention that services are readily available within such community.

E. Conclusion.

Post office closings are important and disruptive events in small and rural communities. And they can in many cases undermine the effective achievement of the “universal service obligation” of the USPS. For that reason, Congress adopted 39 U.S.C. § 404(d) in order to ensure that such closing decisions will not be made lightly. And Congress also empowered the Commission to review closing decisions in appropriate cases to ensure that the USPS follows the law in making post office closing decisions that can adversely impact postal customers. Given the importance of its role in reviews of closures and consolidations, the Commission should seek to retain the broadest interpretation of its review jurisdiction as is justified under the statute. The Commission serves as the last resort for postal patrons affected by such USPS decisions, and it should view its mandate broadly in order to ensure their voices can be heard as contemplated by law.

Giving the words “closure,” “consolidation” and “relocation” their plain meanings, the Commission should follow a procedure in which an action by the USPS that results in a building being closed is a “closure” or “consolidation,” unless the building that is closed is replaced with another building. Such an interpretation is consistent with the requirement of 39 U.S.C. § 404(d) that communities be provided with the maximum effective level of postal services. It is also consistent with the language in 39 C.F.R. § 241.3 that recognizes the provision of a replacement facility as the principal factor that will mean that the closing of a facility is not a “closure” but is instead a relocation (obviating the need for Commission review).

In addition, when considering USPS decisions about closing facilities, the Commission should not unduly elevate the importance of determinations as to the availability of other “sources” for postal services. Nor should the Commission accept definitions of affected “communities” that are so broad as to make it appear that services are readily available when they are in fact available only by substantially increasing

² In fact, this concept is the very reason for the “universal service obligation” imposed upon the USPS. Even the nation’s Founders understood that, if the provision of postal services was left to the free markets, service providers would choose profitable urban markets and ignore more costly rural ones, or would be forced to price rural services higher because of the cost of providing such services. The Founders made a conscious decision that, like the military which protects all Americans, postal services should be provided throughout the country at equal rates. In doing so, the Founders knew that citizens in urban areas would help support postal services to those in rural areas. But, efficient postal services for all was deemed important enough that such a system was acceptable.

inconvenience and inefficiency for postal patrons. To do so in either case would be expressly counter to the statutory policy favoring the maintenance of the maximum effective level of postal services in small and rural communities.

Finally, the comments provided by Steven Hutkins are instructive as to the history of the Commission Dockets concerning these matters, and AUSPL adopts his comments in those respects.

Dated February 5, 2016.

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